IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

SUMMONS FOR JUDGMENT NO. 609 OF 2005

IN

SUMMARY SUIT NO. 493 OF 2005

SVM ENGINEERSS (P) LTD .....**Plffs.**
vs.
M/s. Royal Palms (I) P.Ltd .....**Defnds.**

P.D.P.Rao for the plaintiffs.

D.D. Madon, Sr. Advocate with B. Colabawa;a
and Ms. Falguni Thakkar
i/by Rustamji and Ginawala
for the defendants.

CORAM: S.U. KAMDAR, J.

DATE : 27th February, 2006.

P.C. :.

1. The present suit is filed for the recovery of Rs.2,55,84,519/- being principal amount of Rs.1,25,198.82/-. The claim arises on the basis of Memorandum of Understanding which are Exhibit-B 1 and B 2 to the plaint. Under the said MOU's dated

28.12.2000 and 1.12.2000 a contract was given for the purpose of development of several buildings to be known as ‘Emerald Isle’, ‘Golden Isle’, ‘The Morroccan’ and ‘The Ruby Isle’.

2. Under the terms and conditions of the contract it was provided that in part of consideration the defendants will give to the plaintiffs two flats being 1704 and 1204 on the 17th and 12th floor of the building known as‘Golden Isle’ which was under construction. It was provided that the said portion of consideration known as Barter consideration will consist of 42.5% of the contract amount and the remaining amount will be paid in cash component. Annexure A to the said MOU Ex.B-1clearly indicates that the said amount to be paid in two parts 42.5% and 57.5%. The amount of 42.5% is known as Barter amount whereas the amount of 57.5% is known as cash/cheque component.

3. It is the case of the plaintiff that pursuant to the work order issued by the defendants the plaintiffs have carried out the construction of the

various building particularly RCC frame structures. Plaintiffs have also issued 80 running bills for the work carried out by them to the defendant. It is further case of the plaintiffs that inrespect of part payment of the said running bills the defendants have given 42 cheques totalling to Rs.49,12,143.73/- which are dishonoured by the defendants and the defendants are also liable to the barter amount component of Rs.74,19,882.31/- and the cash/cheque component of Rs.2,03,162.78/-. Admitteldy the said MOU's are inrespect of the work contract. There are several disputes inrespect of the work carried out by the plaintiffs and inrespect of certifications issued by the architect in that behalf.

4. In so far as the dishonoured cheques are concerned which are 42 in number it is the defendants case that the said claim is plainly barred by law of limitation. Admittedly the cheques are dishonoured prior to the first week of October 2001 as mentioned in para-6 of the plaint.

Whereas the suit has been lodged in this court on 21.10.2004 i.e. beyond the period of three years from the date of dishonour of cheques. In a case of dishonoured cheques the cause of action arises from the date when the said cheques are dishonoured. However learned counsel for the plaintiffs have relied upon a part payment of Rs.20 lacs which is paid by the defendants to the plaintiff under a cover of letter dated 26.11.2001. Though the said part payment of Rs.20 lacs was made towards the dishonoured cheque but the noting on the said letter dated 26.11.2001 itself indicates that the plaintiffs did not accept the said part payment towards the said dishonoured cheque but accepted the payment and adjusted the same in respect of Bill No.54 and 61 to 85. Thus inso far as the claim of amount under the dishonoured cheque is concerned there is no part payment and thus the said claim based on dishonoured cheque is barred by the law of limitation. Learned counsel for the plaintiff has also relied upon the provisions of Section 138 of the Negotiable Instrument Act to contend that the cause of action to recover the

amount only arises after 15 days which is the notice period prescribed under Section 138 of the Act. The said contention has no merits because the provisions of Section 138 are applicable only when the criminal prosecution is lodged pursuant to the dishonoured cheques but it does not give any extension of any limitation period. In so far as claim under (b) of the particulars of claim is concerned admittedly the clause in the MOUs provided for handing over of the flat in consideration of the said amount. The flat admittedly are yet not handed over. Learned counsel for the plaintiff in the aforesaid circumstances relied upon Clause 9 of the agreement to claim the monetary amount for such non-compliance of handing over of the flat when agreed under Clause 2 of the said agreement. In my opinion such an issue requires trial and cannot be decided in a summary jurisdiction. In the aforesaid circumstances I am of the opinion that the defendants are entitled to unconditional leave. The issues raised herein is required to be tried and the defendants has made out a case of a triable

issue.

5. Summons for Judgment dismissed. suit is transferred to the list of Commercial Causes. Written statement or points of defence to be filed four weeks from today. Affidavits, list of documents to be filed within four weeks thereafter. Inspection within four weeks thereafter. Suit to be on board of the learned Judge taking Commercial Causes.

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